

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
FM Table of Allotments,	)	
FM Broadcast Stations.	)	
(Loveland, Texas)	)	MB Docket No. 05-36
	)	RM-11030
	)	
(Oil City, Louisiana)	)	MB Docket No. <u>05-37</u>
	)	RM-10790
	)	
Reclassification of License	)	BLH-19900827KA
of FM Station KYKS, Lufkin, Texas	)	
	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: February 2, 2005**

**Released: February 4, 2005**

**Comment Date: March 28, 2005**

**Reply Comment Date: April 12, 2005**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth two separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules that requires the reclassification of FM Station KYKS, Channel 286C, Lufkin, Texas to specify operation on Channel 286C0.<sup>1</sup> The petitioner for each proposal has stated that it will apply for each requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. Station KYKS operates on Channel 286C at Lufkin, Texas with an effective radiated power ("ERP") of 100 kilowatts ("kW") at 325 meters height above average terrain ("HAAT"), which is below the minimum Class C antenna height of 451 meters HAAT. Therefore, Station KYKS is subject to reclassification as a Class C0 facility pursuant to the reclassification procedures adopted in the Commission's *Second Report and Order*, MM Docket No. 98-93,<sup>2</sup> Note 2 to Section 1.420(g), and Note 4 to Section 73.3573 of the Commission's rules. To this end, we issued an *Order to Show Cause*<sup>3</sup> directed to Capstar TX Limited Partnership ("Capstar TX"), licensee of Station KYKS, Lufkin, Texas, affording it 30 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or to otherwise challenge the proposed action. No response was received from Capstar TX. As such, in accordance with the Commission's reclassification procedures noted above, the license

<sup>1</sup> 47 C.F.R. 73.202(b).

<sup>2</sup> See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules.

<sup>3</sup> See *Reclassification of License of FM Station KYKS, Lufkin, Texas*, 19 FCC Rcd 15403 (MB 2004).

for Station KYKS will be reclassified to specify operation on Channel 286C0 instead of Channel 286C at Lufkin.

3. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rule making number and the Commission's Reference Information Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

**A. MB Docket No. 05-36; RM-11130**

**Petitioner:** Charles Crawford  
4553 Bordeaux Avenue  
Dallas, Texas 75205

**Proposal:** Allot Channel 288A at Lovelady, Texas, as that community's second local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Lovelady, Texas	282C3	282C3, 288A
Lufkin, Texas	230A, 261C2, 286C	230A, 261C2, 286C0

**Coordinates:** 31-03-14 NL and 95-32-34 WL

**Additional Information:** The reclassification of Station KYKS to specify operation on Channel 286C0 at Lufkin will eliminate any short spacing to requesting Channel 288A at Lovelady.<sup>4</sup> The proposed Lovelady allotment requires a site restriction of 12.5 kilometers (7.8 miles) southwest to avoid a short-spacing to the license site of FM Station KTCJ, Channel 290C3, Centerville, Texas.

**FCC Contact:** Rolanda F. Smith (202) 418-2180

**B. MB Docket No. 05-37; RM-10790**

**Petitioner:** Charles Crawford  
4553 Bordeaux Avenue  
Dallas, Texas 75205

**Proposal:** Allot Channel 285A at Oil City, Louisiana, as that community's second local aural transmission service.

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<sup>4</sup> The distance between the required site for requested Channel 288A at Lovelady and Station KYKS's licensed site at Lufkin is 92.3 kilometers. A minimum distance separation of 95 kilometers is required in this instance.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Oil City, Louisiana	300C2	285A, 300C2
Lufkin, Texas	230A, 261C2, 286C	230A, 261C2, 286C0

**Coordinates:** 32-44-11 NL and 94-08-10 WL

**Additional Information:** The reclassification of Station KYKS to specify operation on Channel 286C0 at Lufkin will eliminate any short spacing to requesting Channel 285A at Oil City.<sup>5</sup> The proposed Oil City allotment requires a site restriction of 15.6 kilometers (9.7 miles) west to avoid a short-spacing to the license site of FM Station KORI, Channel 284C3, Mansfield, Louisiana.

**FCC Contact:** Rolanda F. Smith (202) 418-2180

4. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference *only* the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted. Counterproposal filed in either proceeding need only protect Station KYKS, Lufkin, Texas, as a Class C0 allotment.

5. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before March 28, 2005, and reply comments on or before April 12, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as listed above for each docket.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>6</sup> This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

7. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff

<sup>5</sup> The distance between the required site for requested Channel 285A at Oil City and Station KYKS's licensed site at Lufkin is 159.1 kilometers. A minimum distance separation of 165 kilometers is required in this instance.

<sup>6</sup> *See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend 47 C.F.R. Sections 73.202(b), 73.504 and 73.606(b).* 46 FR 11549 (February 9, 1981).

for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. **All filings must be addressed to the Office of the Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. Section 1.420(d).)

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in 47 C. F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12<sup>th</sup> Street, S.W, Washington, D.C.